

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION

BARRY VAN WHITTON,)
)
Petitioner,)
)
v.) Case No. 5:18-cv-1225-ACA-
) GMB
WARDEN JIMMY THOMAS, *et*)
al.,)
)
Respondents.

MEMORANDUM OPINION

The Magistrate Judge entered a report recommending that Petitioner Barry Van Whitton's petition for a writ of habeas corpus be denied as untimely. (Doc. 15). Although the Magistrate Judge advised the parties of their right to file objections within fourteen days, the court has not received any objections in the prescribed time.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court hereby **ADOPTS** the Magistrate Judge's report and **ACCEPTS** his recommendation. Accordingly, the court **DENIES** Mr. Whitton's petition because it is untimely.

This court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To make such a showing, a "petitioner must demonstrate that

reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong," *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), or that "the issues presented were adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (internal quotations omitted). The court finds Whitton's claims do not satisfy either standard.

The court will enter a separate final order.

DONE and **ORDERED** this July 19, 2021.



ANNEMARIE CARNEY AXON
UNITED STATES DISTRICT JUDGE